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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,321	03/01/2004	John A Triunfo JR.	02-64	9016
30031	7590	12/02/2004	EXAMINER	
MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			MITCHELL, TEENA KAY	
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/790,321	TRIUNFO, JOHN A	
	Examiner Teena Mitchell	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 March 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-13 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/22/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Specification***

The disclosure is objected to because of the following informalities: Page 10, line 10, "...Inclined surfaces 146 and 146..." should be amended to read --Inclined surfaces 146 and 147--.

Correction is required.

Claim Objections

Claims 8 and 13 are objected to because of the following informalities: Claim 8, line 2, "...or..." should be amended to read --are--. Claim 8, line 3, "...plainer..." should be amended to read --planar--. Claim 13, line 2, "...adapted be coupled..." should be amended to read --adapted to be coupled--. Correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

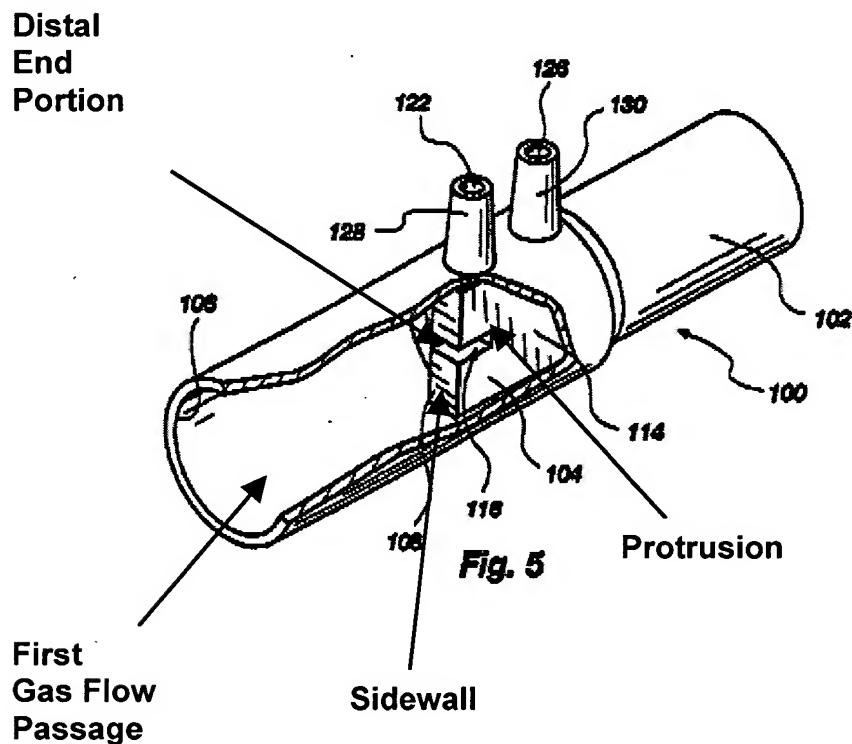
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, and 6-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kofoed et.al. (5,379,560).

Kofoed in an airway adaptor discloses:

- a tubular body (100) having a first gas flow passage defined therein (see illustration of Fig. 5 below); and

- a protrusion (see illustration of Fig. 5 below) extending from an interior wall of the tubular body into the gas flow passage, wherein the protrusion includes:
- a distal end portion spaced apart from the interior wall of the tubular body (see illustration of Fig. 5 below) and
- a second gas flow passage defined through the protrusion (116, 118, 216, 218) having an inlet at the distal end portion and an outlet at an exterior portion of the tubular body; and
- a pair of side walls (see illustration of Fig. 5 below) disposed on the distal end portion of the protrusion such that each sidewall is generally parallel to a direction of a flow of gas through the first passage with inlet of the second gas flow passage disposed between the pair of sidewalls.



With respect to claim 2, Kofoed discloses wherein the protrusion is substantially tubular.

With respect to claim 4, Kofoed discloses wherein the protrusion is substantially centrally located on the tubular body and extends into the first gas flow passage in a direction that is substantially perpendicular to the interior of wall of the tubular body (Figs. 2, 5, and 7).

With respect to claim 6, Kofoed discloses wherein the sidewall extend along a length of the distal end portion of the protrusion such that a channel is defined between the sidewalls with the inlet of the second gas flow passage located at a bottom of the channel (see illustration of Fig. 5 above).

With respect to claim 7, Kofoed discloses wherein the second gas flow passage through the protrusion is defined by a plurality of bores having different diameters (note Fig. 2).

With respect to claim 8, Kofoed discloses wherein each sidewall in the pair of sidewalls include a substantially planar surface and wherein the planar surface are oriented such that the planar surfaces face one another (Figs. 2, 5, and 7).

With respect to claim 9, Kofoed discloses wherein the planar surfaces are tapered such that a distance between the planar surfaces decreases as a distance toward the distal end portion decreases (Figs. 2, 5, and 7).

With respect to claim 10, Kofoed discloses a channel is defined at a junction between each sidewall and a surface of the protrusion at the distal end portion (Figs. 2, 5, and 7).

With respect to claim 12, Kofoed discloses wherein the distal end portion includes a first surface generally parallel to the direction of the flow of gas through the first passage and a raised surface extending from the first surface, and wherein the inlet is defined in the raised surface (Figs. 2, 5, and 7).

With respect to claim 13, Kofoed discloses a coupling portion (at 102) extending from an exterior wall of the tubular body adapted to be coupled to a conduit and wherein the coupling portion includes a third gas flow passage in fluid communication with the second gas flow passage (Figs. 2, 5, and 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kofoed et.al. (5,379,650).

The difference between Kofoed and claim 3 is the protrusion formed of substantially hydrophobic material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the protrusion formed from a hydrophobic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design consideration and because respiration has water it would be obvious to have the protrusion be made from a hydrophobic material to help prevent drag from water buildup or condensation in the tubular body. In re Leshin, 227 F.2d 197, 125 USPQ 416.

With respect to claim 5, Kofoed discloses the claimed invention except for the protrusion being detachable from the tubular body. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the protrusion detachable from the tubular body, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show airway adaptor devices: 6,216,692; 6,142,148; 6,095,986; 5,789,660; 5,153,436.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-

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4798. The examiner can normally be reached Monday-Friday, however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
November 27, 2004